IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S.R. SINGHARAVELU

W.P.No.15263 of 2000 and W.P.No.18076 of 2001
and
WMP.NO.22192 OF 2000 & 26605 OF 2001

1. E. Jayanthi,
D/o.V. Ezhumalai

2. S. Vijaya Ganeswara Moorthy,
S/o. Siva Moorthy .. Petitioners in WP.15263/00

G. Saravanan,
S/o.J.R. Gangadharan .. Petitioner in WP.18076/01

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary,
Home (Courts-II) Department,
Fort St. George, Chennai 9.

2. The Hon□ble High Court of
Judicature at Madras,
rep. by its Registrar General,
Chennai 600 104.

3. The Tamil Nadu Public Service
Commission,
rep. by its Secretary,
Government Estate,
Anna Salai, Chennai 2.

4. The Additional District Judge-
cum-Chief Judicial Magistrate,
Vellore,
Vellore District. .. Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. Vijay Narayan

For Respondents : Mr.P.S. Sivashanmugasundaram
Addl.Govt. Pleader

:O R D E R

(The order of the Court was made by P.K. MISRA,J)

Heard the learned counsels appearing for the parties.

2. The petitioners have prayed for issuing writ of certiorarified mandamus for quashing Roc.No.1176/2000/A dated 2.8.2000 and further directing the respondents to continue the services of the petitioners as copyists with all consequential benefits.

3. The facts giving rise to the present writ petitions are as follows :-

Respondent No.1 is the State Government, Respondent No.2 is the High Court, represented by the Registrar General, Respondent No.3 is the Tamil Nadu Public Service Commission and the respondent No.4 is the Additional District Judge-cum-Chief Judicial Magistrate, Vellore.
Respondent No.1 by letter dated 13.8.1996 to the Respondent No.2, requested the latter to send proposal for sanction of 394 posts of typists for allotment to various courts through out the State. Subsequently, after receiving particulars from Respondent No.2, Respondent No.1 by G.O.Ms.No.1699 Home (Courts-II) Department, dated 11.11.1996 accorded sanction for 394 posts of typists for a period of one year and subsequently by G.O.RT.No.264 dated 10.2.1999, sanction was accorded for further continuance of 348 posts, which have been filled up out of 394 posts originally sanctioned for the period till 30.6.2000. Appointment to the post of typist can be made by promotion from Assistant Superintendent of Copyists, Examiners, Ameenas, Readers and copyists or by direct recruitment or for special reasons by recruitment by persons from any other service. In the newly created vacancies of typists coming within the Unit of the fourth respondent, 9 existing copyists were promoted and 4 existing junior assistants were transferred and 1 examiner was promoted to the post of typists. In the consequent vacancies to the post of copyists or junior assistants or examiner, as the case may be, 14 persons were appointed as copyists by direct recruitment through Employment Exchange including the present petitioners on various dates between January, 1996 and February, 1997. The post of copyist comes under Class-V of the Service. Such persons were appointed by the fourth respondent temporarily and subsequently their services were regularised as copyists and they were placed on probation for a period of two years within a continuous period of three years. In the meantime, three persons, who had been transferred from the post of junior assistant to the post of typist were further promoted to the post of Assistant and in their places, the first 3 persons, who had been appointed as copyists were promoted to the post of typist and thereafter three more persons were appointed as

typist by direct recruitment through the Employment Exchange. Subsequently, another person was promoted as junior assistant and in her place, one K. Chitra was appointed as copyist. Against 394 posts of typists which have been created by G.O.Ms.No.1699, 168 persons were directly appointed as typists through employment exchange pending selection of persons through the Tamil Nadu Public Service Commission. On regular selection by the Tamil Nadu Public Service Commission, those 168 persons, who had been appointed as typists were sought to be ousted from service. At that stage, they had filed WP.No.8101/2000 before the High Court. At that stage, the stand taken by the present respondent No.2 was to the effect that apart from 168 persons, who have been appointed from the employment exchange, rest of the persons had been promoted from the lower posts of copyists, etc., and had been regularly promoted and those persons who had been regularly promoted cannot be replaced by the persons recruited in consultation with the Tamil Nadu Public Service Commission. However, the respondent No.1 allotted candidates recruited through Tamil Nadu Public Service Commission even in respect of the posts filled by promotion among copyists, etc., and thereafter by order dated 2.8.2000, 7 persons were reverted from the post of typist to the post of copyist and one person was reverted from the post of typist to the post of examiner of copies. Out of the copyists, who have been ousted in the aforesaid process, three persons including the present petitioners had already been regularised as copyists. It is the case of the petitioners that since they had already been regularised as copyists, they should not have been ousted from service even without following any procedure or even without any notice.

4. A counter affidavit has been filed on behalf of the fourth respondent. In the said counter affidavit, it is indicated that as per the Tamil Nadu Judicial Ministerial Service Rules, the ratio between the departmental candidates (insiders) and the direct recruits (outsiders) is 2 : 2, and therefore, out of 14 posts of typist made available to the Unit of the fourth respondent, 7 posts were to be filled up by the departmental candidates from the feeder category and the remaining 7 candidates should be filled uop by the candidates allotted by the Tamil Nadu Public Service Commission. By Roc.No.3202/96 dated 29.11.1996, 7 posts of typist meant for the departmental candidates have been filled up. Since the allotment of candidates by Tamil Nadu Public Service Commission was likely to take long time,by Roc.3202/1996 dated 29.11.1996, six senior most approved copyists and one senior most approved Examiner of Copies were temporarily promoted to the post of typist, who shall be replaced by the candidates allotted by Tamil Nadu Public Service Commission as and when available. On temporary promotion of such copyists, vacancy arose for six posts of copyists and one post of examiner of copies and for such temporary vacancies, six persons have been recruited as copyists from the employment exchange and it was so indicated in their order of appointment. One temporary vacancy of examiner of copies was filled-up by promoting from the feeder category of Record Clerk, who got his subsequent promotion as copyist. Subsequently, in 1998-99, since 3 permanent posts of typist got promoted as Assistants, in their places 3 senior most copyists were temporarily promoted as typists and consequently, 3 other persons were appointed as copyists in the consequential vacancies. Subsequently, on appointment of typists on regular selection by Tamil Nadu Public Service

Commission, the persons who had been temporarily accommodated as typists were reverted back to their original posts which they were initially holding. Because of the aforesaid, as a necessary consequence, the persons who had been temporarily appointed as typists had to be ousted from their temporary service. It has been further indicated that since there has been no regular vacancy, such persons could not have been regularised.

5. Having heard the learned counsels appearing for the parties at length, we are afraid that the relief claimed by the petitioners cannot be granted to them. It is of course true that after having been temporarily appointed, fourth respondent has passed an order for regularisation. However, in the absence of any sanctioned vacancy, such action of the fourth respondent could not have conferred a permanent status on the petitioners. Narration of the events, as indicated in the writ petition and the counter affidavi t, makes it clear that such persons had been appointed against the consequential vacancies caused due to temporary promotion on permanent incumbents. Since those persons have come to their original posts in view of the allotment of candidates by Tamil Nadu Public Service Commission as per the Rules, the present petitioners have to give way. The situation faced by the petitioners is akin to the case of ouster of service on account of abolition of the post itself. The principle that an incumbent has no right to continue in service when the post itself is abolished is applicable to the present situation. The appointment of persons through Tamil Nadu Public Service Commission has already been upheld. As a necessary consequence of the said fact, the persons who had been temporarily holding the post of typists, who were appointed on regular basis against substantive posts of copyists had to come back to their original posts, thus replacing the present petitioners. In such circumstances, even though ouster from service may appear to be unjust in law, the petitioners cannot be helped.

6. Learned counsel for the petitioners has submitted that many vacancies would arise in future and keeping in view their experience as well as their legitimate expectation, a direction should be issued for regular appointment in future vacancy. Even though such a direction cannot be issued at this stage, keeping in view the peculiar facts and circumstances of the case, a direction can be issued to the effect that the application of the petitioners for appointment in any future vacancy should be given priority and even if any such petitioner crosses the upper age for entering into service, such upper age limit must be taken to have been relaxed and crossing of age limit shall not be considered as a bar.

7. Subject to the aforesaid observations, both the writ petitions are disposed of. Consequently, the connected miscellaneous petitions are closed. No costs.

Index : Yes
Internet: Yes

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To

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